SUPREME COURT OF THE UNITED STATES.

No. 398.

ADAM BACHMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 Pleas and proceedings before the district court of Polk county, Iowa, begun and held on the 8th day of January, A. D. 1866, the Hon. Charles C. Nourse, judge of the 5th judicial district, presiding.

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

Be it remembered that heretore, to wit, on the 27th day of July, A. D. 1865, there was filed in the office of the clerk of the district court in and for Polk county and State of Iowa, an indictment in words and figures following, to wit:

2 *Indictment for keeping a nuisance.*

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

The grand jury of the county of Polk, in the State of Iowa, being legally impanelled in the name and by the authority of the State of Iowa, accuse Adam Baughman of the crime of keeping a nuisance committed as follows:

The said Adam Baughman, on the first day June, A. D, 1865, at the county of Polk aforesaid, and in the city of Des Moines in said county, and on every day from that time until the finding of this indictment, did wilfully and unlawfully establish, continue, and use a building and place for the purpose and with the intent of keeping, owning, and selling intoxicating liquors within the State of Iowa contrary to law, and then and there did sell gin, rum, brandy, and whiskey contrary to law, to the great annoyance and common nuisance of all the good people of said county of Polk, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Iowa.

H. W. MAXWELL,
District Atty. of the 5th Judicial District, Iowa.

3 The within indictment was presented to the district court of Polk county, Iowa, in open court by the foreman of the grand jury, and filed by the clerk of said court, on this 27th day of July, 1865.

H. H. GRIFFITHS,
Clerk of the District Court of Polk County, Iowa.

I hereby order a bench warrant to issue forthwith on the indictment for the arrest of said defendant, and his bail is fixed at three hundred dollars.

WILLIAM LAUGHRIDGE,
Judge.

And afterwards, to wit, on the 1st day of August, 1865, there was filed in the office of said clerk a plea of not guilty, with reservations in the words and figures following, to wit:

In the district court of Polk county, Iowa, July term, A. D. 1865.

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

Now comes the defendant in the above-entitled cause and pleads not guilty, expressly, however, saving and reserving the right to withdraw this plea, and attack the indictment herein by demurrer or motion to set aside if upon examination the same shall be deemed defective and open to objection.

PHILLIPS, FINCH & ELWOOD,
Attorneys for Defendants.

And afterwards, to wit, on the 8th day of August, A. D. 1865, there was filed in the office of said clerk a motion for continuance in words and figures following, to wit:

4 *Indictment for nuisance.*

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

STATE OF IOWA, *Polk County, ss:*

I, Adam Baughman, of said county, being duly sworn, do depose and say, that I am the defendant in the above-entitled action, that I, as defendant herein, am indicted for a nuisance under the 8th section of the act of the general assembly of the State of Iowa, entitled "An act for the suppression of intemperance," which took effect July 1st, 1855; that the indictment against me was found at the present term of this court, and that I was arrested and arraigned some four or five days since.

And I further depose and say, that the actions, criminal, ordinary, and equitable, triable at the present July term of this court, were duly arranged upon the calendar or docket prepared by the clerk of this court, as required by section 3,005 of the revision of 1860, in the order therein specified; that this court at this term proceeded to try and dispose of the said causes so arranged in their order, and tried, continued, and disposed of all the criminal cases on said docket, as required by sec. 3,006, with the exception of two or three cases which, by consent and direction of the court, were set down for trial at a subsequent day in the term; that after the court had so disposed of the causes set down on the said calendar, prepared by the clerk as criminal cases as aforesaid, the court then entered upon the trial of the civil docket or calendar, and tried and disposed of several jury causes and received several verdicts and entered judgments thereon.

5 And I do further depose and say that acting upon the statements and advice of my counsel herein, that under the provisions of sec. 3,005, and 3,006, and 4,725 this action could not be tried at this term of this court, unless I desired the trial thereof, I made no preparation for the trial of this action, and am not now prepared to try the same; that I have, as I verily believe, material testimony for my successful defence on the trial hereof, which I have not been and am not now able to procure at this term of this court; that I do not desire that this cause be tried at the present term of this court, but I desire a continuance of the same to enable me to fully prepare for the trial of the same, and I hereby offer good and ample security for my appearance at the next term of this court, at which time I expect to be prepared for the trial hereof.

And I further depose and say that I verily believe I have a good defence to this action, in case I have time to prepare for the defence thereof, but under the circumstances as above set forth, I am not and could not be prepared for a trial at this time of this court.

And I do further depose and say that I was not in custody or on bail, nor had I deposited money instead of bail when this indictment was found against me.

Therefore, for the reasons appearing in this affidavit, I respectfully ask for a continuance of this action until the next term of this court, especially relying on the facts above stated and the provisions of secs. 3,005, 3,006, 4,723, and 4,725 of the revision of 1860.

A. BAUGHMAN.

6 Subscribed and sworn to by Adam Baughman, before me, this 8th day of August, 1865.

[SEAL.] A. MORRIS,
Notary Public, Polk County, Iowa.

And afterwards, to wit, on the 8th day of January, A. D. 1866, there was filed in the office of said clerk, a "notice to introduce" witnesses in words and figures following, to wit:

Notice to introduce witnesses.

THE STATE OF IOWA }
vs. }
ADAM BAUGHMAN. }

The said defendant, Adam Baughman, is hereby notified that on the trial of the above-entitled cause the plaintiff, the State of Iowa, will introduce in support of the indictment the following-named witnesses, to wit:

1st. Samuel Noel; residence, Des Moines, Polk county, Iowa; occupation, city marshal.

2d. John Morris; residence, Des Moines, Polk county, Iowa; occupation, tailor, and

3d. J. C. Warner; residence, Des Moines, Polk county, Iowa; occupation, laborer. All of whom are expected to testify that the

defendant, Adam Baughman, in Des Moines, in said county, on the 1st day of June, 1865, and prior thereto, within three years, and subsequently thereto, until the 27th day of July, 1865, did continue and use a building for the purpose of selling intoxicating liquors therein contrary to law.

H. W. MAXWELL,
District Att'y of the 5th Judicial District, Iowa.

7 Received the within notice on the 4th day of January, 1866, and on the 5th day of January I served the same on the within named defendant, Adam Baughman, by reading the within notice to him and delivering him a true copy of the same at Des Moines, Iowa.

NATH'L McCALLA,
Sheriff Polk County, Iowa.
By J. BAUSMAN, *Dept.*

And afterwards, to wit, on the 11th day of January, 1866, the same being the 4th day of the January term of said court, the following proceedings were had:

STATE OF IOWA
vs.
ADAM BAUGHMAN. } 160 crim.

Now on this day this cause came on to be heard, the plaintiff appearing by Hon. H. W. Maxwell, district attorney, and the defendant by his attorneys, Phillips & Phillips, and then came a jury of twelve good and lawful men, to wit: David Harris, J. J. Fox, J. D. Davis, George Bogenwight, John Witman, Alfred Harris, F. Fuller, F. Olmstead, James Yonk, A. W. Reed, J. S. Wheaton, Aaron Brown, who having duly sworn to well and truly try the issues in this cause, and hearing the evidence, the argument of counsel, and the instructions of the court, retired in charge of a sworn plaintiff to consider of their verdict, and after a time spent in deliberation, returned into court with the following verdict, to wit:

We, the jury, find the defendant guilty as charged in the indictment. Whereupon the jury was discharged.

8 And afterwards, to wit, on the 15th day of January, 1866, the same being the 7th day of the January term of said court, the following proceedings were had, to wit:

STATE OF IOWA
vs.
ADAM BAUGHMAN. } 160 crim.

Now comes Phillips and Phillips, att'ys for defendant, and files motion in arrest of judgment and for a new trial, which is overruled by the court, to which defendant excepts and files bill of exceptions duly settled and signed by the court.

And afterwards, to wit, on the same day, there was filed in the office of said clerk a bill of exceptions, in the words and figures following, to wit:

In the district court of Polk county, Iowa, January term, 1866.

STATE OF IOWA
vs.
ADAM BAUGHMAN.

Be it remembered, that in the trial of this cause, and after the State had rested its case, and the State claiming that the alleged nuisance existed in the city of Des Moines, Polk county, Iowa, the defendant offered in evidence a license duly executed by the United States to the defendant, which license is in the words and figures following, to wit:

No. 165.—*United States internal revenue license, in force from May, 1865, expires May 1st, 1866.*

To all whom it may concern:

This license is granted to A. Baughman, of the city of Des
9 Moines, in the county of Polk, and State of Iowa, to carry on the business or occupation of ret. liq. dealer, at No. street in the aforementioned place, he having paid the tax of twenty-five dollars therefor, conformably to the provisions of the excise laws of the United States. This license is to be in force until the 1st day of May, 1866, provided the holder thereof shall conform to the requirements of said laws, and of such other laws as are now or may hereafter be in this behalf enacted.

Given under my hand and seal at Des Moines, this 8th day of September, A. D. 1865.

[SEAL.] S. HAINES,
Collector of the 5th Collection District in the State of Iowa.
A. BOWERS, *Dept'y.*

That the court excluded such certificate or license, and refused to permit the defendant to give the same in evidence to the jury, to which ruling of the court, and excluding of such evidence, the defendant then and there at the time excepted, and asks the same may be made to appear of record, and is so ordered by the court; that thereupon the court, on its own motion, gave the jury the following instructions, in the words and figures following, to wit:

STATE OF IOWA
vs.
ADAM BAUGHMAN. } Nuisance.

Defendant is charged with establishing and keeping a place for the sale of intoxicating liquors, contrary to law, at the place named in

the indictment. The gist of the offence is the establishing and
10 keeping a place for and keeping intoxicating liquors for sale contrary to law.

The law makes the selling at any time from the date charged in the indictment and the finding of the indictment, contrary to law, at the place charged, presumptive evidence of keeping liquors for sale, and proof of such sale is sufficient to charge defendant, unless such presumption is rebutted by evidence.

It is necessary before you can find defendant guilty that you should be satisfied from the evidence, beyond a reasonable doubt, of the truth of the matters charged.

C. C. NOURSE, *Judge.*

That the giving of each of the said several instructions to the jury the defendant then and there duly excepted, and that the foregoing is all the instructions given to the jury in said cause.

And be it further remembered, that upon the reading of the verdict of the jury in this cause, and before judgment, the defendant filed his motion herein in arrest of judgment, and for a new trial, in the words and figures following, to wit:

In the district court of Polk county, Iowa, January term, 1866.

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

Comes now defendant, and moves the court in arrest of judgment and for new trial in the above cause, and for reason thereof shows the following, to wit:

I. The verdict of the jury is contrary to the law, and is not
11 sustained by the evidence.

II. The court erred in refusing to permit the defendant to give in evidence to the jury the license to him from the United States, as a retail liquor dealer, and other evidence offered.

III. The court erred in giving its instruction to the jury, given upon its own motion.

IV. The laws of the State of Iowa, upon and under which the indictment in this case is found, and upon which the same is based, is in conflict with the Constitution of the United States and the acts of Congress, and is in conflict with the provisions of the constitution of the State of Iowa.

PHILLIPS & PHILLIPS,
Attorneys for Defendant.

Which said motion, in arrest of judgment and for new trial, was, by the court, overruled, to which ruling of the court and overruling said motion, defendant excepts, and asks that all the foregoing facts and exceptions be made part of the record herein, and it is so ordered by the court.

CHARLES C. NOURSE, *Judge.*

And afterwards, to wit, on the 18th day of January, A. D. 1866, the same being the 10th day of the January term of said court, the following proceedings were had:

STATE OF IOWA
vs.
ADAM BAUGHMAN. } 160 crim.

Now, on this day, this cause came on to be heard, and for final hearing and sentence, and the defendant being three times
12 solemnly called, comes not, but wholly makes default herein; and the court having inspected the verdict of the jury herein, and all the papers and pleadings, doth find the defendant, Adam Baughman, is guilty as charged in the indictment, and doth sentence him to pay a fine of three hundred dollars ($300) and the costs of this action, and to stand committed to the county jail until the same is paid.

It is therefore ordered and adjudged by the court that the plaintiff have and recover of the defendant, Adam Baughman, the sum of three hundred dollars and the costs of this suit, taxed at forty-six 20-100 dollars, and that execution issue therefor.

Signed by C. C. Nourse, judge, at the end of the day's proceedings.

And afterwards, to wit, on the 24th day of January, 1866, an appeal bond was filed in the office of said clerk, in words and figures following, to wit:

In the district court of Polk county, Iowa, January term, 1865.

THE STATE OF IOWA
vs.
ADAM BAUGHMAN.

Know all men by these presents that I, Adam Baughman principal, and G. Munzenmaier, as sureties, are hereby held and firmly bound unto the State of Iowa, in the penal sum of six hundred dollars, to be void upon the following conditions: Whereas the defendant, Adam Baughman, has appealed from the judgment and several rulings of the district court aforesaid, to the supreme court of
13 Iowa, rendered thereon by said district court, at the January term, 1866: Now if the said Adam Baughman, appellant, shall pay to the State of Iowa, appellee, all costs and damages that shall be adjudged against the said appellant on such appeal, and will satisfy and perform the judgment of the said district court appealed from in case the same shall be affirmed, and any judgment or order which the supreme court may render, or cause to be rendered, by the district court, not exceeding the amount of the judgment appealed from, then this bond to be void, and otherwise in full force and effect.

I, G. Munzenmaier, being duly sworn, depose and say, that we are each severally worth in property, not exempt from execution, and

over and above our liabilities, the amount of the above and foregoing bond.

A. BAUGHMAN.
G. MUNZENMAIER.

Subscribed and sworn to before me, this 24th day of January, 1866.
H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 11th day of May, 1866, there was filed in the office of said clerk a notice of appeal, in words and figures following, to wit:

District court of Polk county, Iowa.

STATE OF IOWA
vs.
ADAM BAUGHMAN.

To the clerk of the district court of Polk county, Iowa:

14 You are hereby notified that the defendant, in the above-entitled cause has appealed from the judgment rendered against him at the trial of said cause, in the district court of Polk county, to the supreme court of the State of Iowa.

You will, therefore, certify to the clerk of the said supreme court before the next term, in June, a full and complete copy of the whole record in the case.

FINCH, CLARK & RICE,
Attorneys for Defendant.

Service accepted May 11th, 1866.
H. H. GRIFFITHS, *Clerk.*

And afterwards, to wit, on the 19th day of May, 1866, there was filed in the office of said clerk a notice of appeal to defendant, in words and figures following, to wit:

STATE OF IOWA
vs.
G. MUNZENMAIER.

To the district attorney of the 5th judicial district:

You are hereby notified that the defendant in the above-entitled cause has appealed from the judgment rendered against him at the trial of said cause, in the district court of Polk county, to the
15 supreme court of the State of Iowa. and that the same will be for hearing at the next session thereof.

FINCH, CLARK & RICE,
Attorneys for Defendant.

I accept service of his notice and waive a copy, this 17th day of May, 1866.

H. W. MAXWELL,
District Attorney of the 5th District.

16 STATE OF IOWA, *Polk County:*

I, H. H. Griffiths, clerk of the district court of said county, do hereby certify that the above and foregoing is a true, full, and complete transcript of the cause wherein the State of Iowa was plaintiff, and Adam Bachman was defendant, as full, true, and complete as the same appears of record in my office.

Witness my hand and the seal of said court, this 22d day of May, 1866.

[L. S.] H. H. GRIFFITHS, *Clerk.*

[5-cts. U. S. rev. stamp.]

Dist. court costs	$46 20
Two transcripts	11 00
Two certificates	1 10
	58 30

17 Be it remembered that, at a supreme court of the State of Iowa, begun and held at the city of Des Moines, on Thursday, the 14th day of June, A. D. 1866—

Present: Hon. Ralph P. Lowe, chief justice; Hon. Jno. F. Dillon, Hon. C. C. Cole, Hon. Geo. G. Wright, judges—

The following was entered of record, to wit:

THE STATE OF IOWA *against* ADAM BACHMAN, appl't. } 2,483.—Appeal from Polk co.

This day this cause coming on for hearing was submitted to the consideration of the court.

And afterwards, to wit, on the 16th day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA *against* ADAM BACHMAN, appl't. } Appeal from Polk co.

This cause having been submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment and proceedings of the court below, and file their written opinion. It is therefore considered and adjudged by the court that the judgment of the court below be
18 affirmed, and that the State of Iowa have and recover of and from the appellant, Adam Bachman, the sum of three hundred dollars as a fine, together with the costs of the court below, taxed at $, and the costs of this court, taxed at $, and that execution issue therefor, and that he stand committed to the county jail of Polk county until said fine and costs are fully paid, and a certified copy of this judgment shall be furnished the sheriff of Polk county by

the clerk of this court, which shall be his sufficient warrant to arrest and commit the said Adam Bachman to the jail of Polk county, and to stand so committed in accordance with this judgment, and the said Adam Bachman being three times called, comes not, but makes default. It is therefore ordered and adjudged that default be entered in favor of the State of Iowa and against the said appellant, and the undertaking of G. Munzenmaier, the bail in this case, is forfeited.

And afterwards, to wit, on the 21st day of June, 1866, the following was entered of record, to wit:

THE STATE OF IOWA
against
ADAM BACHMAN.

19 In this case the court order that if an appeal is taken to the Supreme Court of the U. S., that the bail be in the sum of $600, to be approved by the clerk of this court.

20 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court, do hereby certify that the foregoing pages, from 17 to 18, inc., contain a full, true, and complete transcript of the journal entries in said cause in the supreme court of Iowa, as full, true, and complete as the same now appear of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 16th day of November, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-ct. stamp, cancelled.]

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the renditioin of a judgment in a plea which is in the said supreme court of the State of Iowa, before you, between the State of Iowa and Adam Bachman, manifest error hath happened to the great damage of the said Adam Bachman, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

22 Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the 89th.

[L. S.] W. G. WOODWARD,
Clerk of the United States Circuit Court for the District of Iowa.

50-cent U. S. rev. stamp.

The within writ of error allowed, this 25th day of June, 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed June 25, '66.

L. KINSEY, *Cl'k.*

23 Supreme court of the State of Iowa.

THE STATE OF IOWA
vs.
ADAM BACHMANN.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause, and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa, entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855, and especially the validity of the 8th section of said act, on the ground that said act, and especially the 8th section thereof, were repugnant to and in conflict with the Constitution and laws of the United States; and that the decision of this court was in favor of the validity of said statute, and of the 8th section thereof.

And I do further certify that in the above-entitled cause, and on the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, Adam Bachmann, to keep intoxicating liquors, either imported or domestic, with intent to sell the same, under a license granted to him by the Government of the United States pursuant to and in compliance with the provisions of the act of Congress entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862, and the acts amendatory thereof; and that the decision of this court was against the validity of such right, privilege, or authority under such license.

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of the record in the above-entitled cause.

In witness whereof I have hereto set my hand and caused the seal

of the supreme court of the said State to be affixed at Des Moines, in said State, this 26th day of June, 1866.

[L. S.] R. P. LOWE,

Chief Justice of the Supreme Court of the State of Iowa.

Filed June 26, 1866.

L. KINSEY, *Cl'k.*

24 STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript in the cause of the State of Iowa against Adam Bachman, filed in the supreme court of Iowa, as full, true, and complete as the original now on file in said court. I further certify that I have attached hereunto the original writ of error in said cause, directed to the judges of the supreme court of Iowa, and also the certificate of the chief justice of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Des Moines, this 26th day of October, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-cent int. rev. stamp.]

25 United States of America to the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Iowa, wherein Adam Bachman is plaintiff, and you are defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ralph P. Lowe, Chief Justice of the supreme court of the State of Iowa, this 26th day of October, in the year of our Lord 1866.

R. P. LOWE.

Chief Justice of the Supreme Court of the State of Iowa.

26 STATE OF IOWA, *Polk County:*

I, J. M. Walker, being duly sworn, depose and say that I am United States marshal for the district of Iowa; that the within citation came into my hands on the 27th day of October, 1866, and was by me served on the State of Iowa, by reading the same and leaving a true copy thereof with Mr. Stone, governor of said State, at Knoxville, Iowa, on the 29th day of the same month, and by sending the same and delivering a true copy of the same to F. E. Bissell, attorney general of said State, at Dubuque, in said State, on the 1st day

of Nov., 1866, and at the respective times of service, and exhibit the original hereof to gov. and att'y gen'l.

J. M. WALKER,
U. S. Marshal, Dist. of Iowa.

Subscribed and sworn to by J. M. Walker, before me, on this 1st day of November, A. D. 1866.

[L. S.]

J. D. RIVES,
Notary Public, Polk County, Iowa.

Marshal's fees:

Mileage	$18 42
Service	4 00
	22 42